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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JAIME ANTONIO LEPE,

Defendant and Appellant.

F071320

(Super. Ct. No. CRM030085)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Merced County. Mark V. Bacciarini, Judge.

Carol Foster, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and Ivan P. Marrs, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Jaime Antonio Lepe pled no contest on February 10, 2014, to possession of a stolen vehicle in violation of Penal Code section 496d.<sup>1</sup> He also admitted

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\*Before Poochigian, Acting P.J., Detjen, J. and Peña, J.

a prior serious felony allegation for first degree burglary within the meaning of the three strikes law. California voters passed Proposition 47, the Safe Neighborhoods and Schools Act, on November 4, 2014. Defendant petitioned the trial court to recall his sentence and reduce his conviction to a misdemeanor pursuant to section 1170.18, subdivision (a) on November 20, 2014. The trial court denied defendant's petition on February 2, 2015.

Defendant appeals from the denial of his petition for resentencing under section 1170.18 seeking modification of the sentence imposed on his prior conviction for possessing a stolen vehicle (§ 496d). Defendant contends his conviction is eligible for resentencing under Proposition 47 and the denial of his request violates principles of equal protection. We disagree and affirm the trial court's judgment.

### **DISCUSSION**

Defendant contends rules of statutory interpretation and the clear legislative intent behind Proposition 47 show that section 496d is eligible for resentencing under sections 1170.18 and 490.2. In addition, defendant argues that treating a conviction for theft of an automobile under Vehicle Code section 10851 as a felony while other similar property thefts are treated as misdemeanors under Penal Code section 490.2 violates equal protection principles. We have previously addressed both issues in *People v. Saucedo* (2016) 3 Cal.App.5th 635 (*Saucedo*), review granted November 30, 2016, S237975.<sup>2</sup> We held in *Saucedo* that Vehicle Code section 10851 is not affected by the changes enacted through Proposition 47, and no equal protection violation arises from the different potential punishments for, or the failure to grant retroactive sentencing relief to, those

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<sup>1</sup>Further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup>Effective July 1, 2016, California Rules of Court, rule 8.1115(e)(1) was amended to provide that a published opinion of a Court of Appeal has no binding or precedential effect once the matter is pending review in the Supreme Court and "may be cited for potentially persuasive value only."

convicted under Vehicle Code section 10851. (*Sauceda, supra*, at pp. 644-650.) We see no reason to depart from this ruling here.

As explained in *Sauceda*, a conviction under Vehicle Code section 10851 does require explicit determination of intent to steal. (*Sauceda, supra*, 3 Cal.App.5th at pp. 643-644, 646.) Like its Vehicle Code counterpart, section 496d also does not require theft because it proscribes a class of crimes involving the receipt or the purchase of a vehicle knowing it was stolen. *Sauceda* further held the voters did not intend to modify Vehicle Code section 10851. (*Sauceda, supra*, at pp. 652-654, citing *People v. Wilkinson* (2004) 33 Cal.4th 821, 838.) By a parity of reasoning, we find our decision in *Sauceda* persuasive and that its reasoning should apply to section 496d as well as its Vehicle Code counterpart.

The court in *People v. Varner* (2016) 3 Cal.App.5th 360, 366-367 (*Varner*), review granted November 22, 2016, S237679, held sections 490.2 and 1170.18, enacted by Proposition 47, did not affect the eligibility of defendants convicted under section 496d for resentencing because the newly enacted sentencing statutes did not include section 496d even though they expressly included section 496. If a defendant's acquisition of a vehicle in violation of section 496d was of property worth less than \$950, he or she is not entitled to resentencing pursuant to section 1170.18. (*Varner, supra*, 3 Cal.App.5th at p. 370, fn. 4.)

As did our court in *Sauceda*, *Varner* further held the equal protection clause did not apply simply because the prosecutor could have prosecuted the defendant under section 496, which is subject to Proposition 47, rather than section 496d, a statute not subject to the proposition's resentencing provisions. Citing *People v. Wilkinson, supra*, 33 Cal.4th at page 838, *Varner* found neither the existence of two identical criminal statutes prescribing different levels of punishments nor the exercise of the prosecutor's discretion in charging one statute but not the other violates equal protection. *Varner* noted our Supreme Court has applied the rational basis test where there is a disputed

statutory disparity where it does not implicate class or a fundamental right. (*Varner, supra*, 3 Cal.App.5th at p. 368.) *Varner* held there was a rational basis for treating punishment differently under sections 496 and 496d. The Legislature has the discretion to proceed in an incremental and uneven manner without engaging in arbitrary or unlawful discrimination. (*Varner, supra*, at pp. 369-370.)

We agree with the People’s position that there is a rational basis for treating receipt of stolen vehicles differently from receipt of other stolen property because theft of vehicles leads to great monetary loss due to the significant expense vehicle theft imposes on its victim-owner, the unique role vehicles play in securing the livelihoods of their owners, the substantial costs to businesses such as insurance companies that are acutely affected by vehicle thefts, and the substantial benefits to criminal enterprises like “chop shops” that profit from receiving stolen vehicles. We find the reasoning in *Varner* persuasive.<sup>3</sup>

### **DISPOSITION**

The order denying defendant’s petition for resentencing is affirmed.

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<sup>3</sup>We also reject defendant’s assertion that if his sentence is not subject to equal protection analysis, the rule of lenity should be applied to mandate a resentencing hearing. The People’s explanation of the public policy reasons for not applying the resentencing provisions of Proposition 47 to acquisition of stolen vehicles is a persuasive rationale for not following the rule of lenity here.